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Supreme Court of the United States

MARK J. SHERIFF, SARAH SHERIFF, WILES, BOYLE, BURKHOLDER & BRINGARDNER CO., LPA, AND MICHAEL DEWINE, ATTORNEY GENERAL OF OHIO,
Petitioners,

v.

PAMELA GILLIE AND HAZEL MEADOWS,
Respondents.

On Writ of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF FOR AARP AS AMICUS CURIAE SUPPORTING RESPONDENTS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iv

STATEMENT OF INTEREST 1

SUMMARY OF ARGUMENT 2

ARGUMENT 4

I. CONSUMERS NEED PROTECTION FROM ABUSIVE, DECEPTIVE, AND UNFAIR COLLECTION PRACTICES USED BY THIRD-PARTY DEBT COLLECTORS TO EXPLOIT FINANCIAL, EDUCATIONAL, AND CIRCUMSTANTIAL VULNERABILITIES OF DEBTORS 4

A. Increasing complaints about abusive debt collection practices corresponds to mounting consumer debt loads 7

B. The bulk of debt in collection is related to unavoidable and unaffordable health care, which can compromise a debtor's ability to pay other debt that otherwise would be manageable 12

C. Economically insecure consumers may be plunged into a collection "nightmare" by unavoidable and unaffordable medical expenses and other financial shocks. 14

D. Debt collectors cause severe distress by intentionally targeting unsophisticated debtors and older people and using abusive debt collection practices in order to exploit their vulnerabilities 16

II. THE FDCPA ESTABLISHED A MINIMUM NATIONAL STANDARD OF CONDUCT THAT PROTECTS DEBTORS AND DOES NOT UNDULY LIMIT STATES FROM COLLECTING CONSUMER DEBT USING THIRD-PARTY DEBT COLLECTORS. 22

A. The FDCPA established a minimum national standard of conduct to protect vulnerable consumers from the abusive practices of third-party debt collectors. 22

B. The practices prohibited by the FDCPA should not be allowed by any collector 23

CONCLUSION 26

TABLE OF AUTHORITIES

Page

Cases

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489 U. S. 726 (1989) 26

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STATEMENT OF INTEREST[1]

Many older people are vulnerable to the serious and lasting impact of abusive, deceptive, and unfair debt collection practices, which may leave them without sufficient resources to pay for basic necessities such as food, shelter, and medical care. AARP is a nonpartisan, nonprofit organization with a membership dedicated to addressing the needs and interests of people age 50 and older.

AARP has a strong interest in participating as amicus curiae in this case. It has the potential to eliminate an important protection against abusive, deceptive, and otherwise unfair debt collection practices by third-party debt collectors, whom Congress has found have a strong financial incentive to collect debts by any means. Having been hired by the state does not alter this incentive. They may or may not use abusive—or even egregious—practices, such as false threats of prosecution or taking one's home or Social Security payments. The protection provided by the FDCPA is essentially the only protection vulnerable consumers have to stop such abuses. AARP's participation in this case will assist the Court in understanding the vulnerability of older people to abusive, deceptive, or unfair debt collection practices and that protecting these vulnerable

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[1] No counsel for a party authored any part of this brief and no counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. Only AARP or their attorneys have paid for the filing and submission of this brief. Pursuant to Rule 37.3(a), all parties consented to the filing of this brief. Letters by all parties consenting to AARP filing a brief amicus curiae are being filed with the Court.

debtors does not unduly limit states from collecting debts.

SUMMARY OF THE ARGUMENT

Congress enacted the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.*, to protect financially vulnerable and unsophisticated consumers from the practices of a necessary but abuse-ridden industry. It found "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors." 15 U.S.C. § 1692(a). Put simply, the use of abusive, deceptive or unfair collection practices is not justified just because a consumer owes a debt. Congress debunked the myth that all debtors are deadbeats who are capable of paying their bills but willfully refuse to do so or who incur debt without the intention of paying. S. Rep. No. 95-382, at 3, reprinted in 1977 U.S.C.C.A.N. 1695, 1696 (finding that consumers often are subject to collections due to an "unforeseen event such as unemployment, overextension, serious illness, or marital difficulties or divorce").

The debt collection industry has changed and grown dramatically since the FDCPA was enacted. Unfortunately, abusive, deceptive, and unfair debt collection practices continue to plague vulnerable consumers. Debt collection is the leading source of consumer complaints to the Consumer Financial Protection Bureau (CFPB). Consumer Fin. Prot. Bureau, Annual Report 2015: Fair Debt Collection Practices Act (2015) [hereinafter CFPB 2015 Annual

Report], http://1.usa.gov/1QYTr8l (reporting approximately 88,300 consumer complaints in 2014).

Many older people are particularly vulnerable to debt collection abuses. Increasingly, they are nearing their retirement years saddled with unaffordable debt loads, lagging income, and rising costs for medical care, housing, and other necessities. Heather C. McGhee & Tamara Draut, *Retiring In The Red: The Growth Of Debt Among Older Americans* 2, Dēmos, (2004) http://bit.ly/1XVvLHd. Nearing their retirement years, older people "can't rely on raises or job-hopping for better pay to help dig them out." Michelle Singletary, *Be attuned to seniors who carry a burden of debt*, The Washington Post (Feb. 9, 2016), http://wapo.st/1RXMB7M. And the value of their assets was decimated during the Great Recession, or depleted to cover long periods of unemployment. *See* Amy Traub, *In the Red: Older Americans and Credit Card Debt* 3-4, AARP Pub. Pol'y Inst. Middle Class Security Project (Jan. 2013), http://bit.ly/1KHjww0.

This Court should affirm the Sixth Circuit's decision. *See Gillie v. Law Office of Eric A. Jones, LLC*, 785 F.3d 1091, 1101-1102 (6th Cir. 2015), *cert. granted sub nom Sheriff v. Gillie*, 193 L. Ed. 495 (U.S. Dec. 12, 2015) (No. 15-338). A narrow construction of the "state officer" exception to the definition of "debt collector" preserves the FDCPA's remedial purpose of protecting vulnerable consumers from abusive, deceptive, or otherwise unfair treatment by third-party debt collectors. The interpretation advocated by Petitioners will prevent

consumers from challenging explicitly prohibited abuses—regardless of how egregious—that may be committed by participants of the industry that Congress enacted the FDCPA to police.

Requiring third-party debt collectors hired by a state to comply with the minimal national standard of conduct Congress established when it enacted the FDCPA does not prevent states from outsourcing collection of consumer debt owed to a state. It only requires any such collectors to use "[m]eans other than misrepresentation or other abusive debt collection practices [that] are available for the effective collection of debts." 15 U.S.C. § 1692(c).

AARP urges this Court to affirm the decision of the Sixth Circuit.

ARGUMENT

I. CONSUMERS NEED PROTECTION FROM ABUSIVE, DECEPTIVE, AND UNFAIR COLLECTION PRACTICES USED BY THIRD-PARTY DEBT COLLECTORS TO EXPLOIT FINANCIAL, EDUCATIONAL, AND CIRCUMSTANTIAL VULNERABILITIES OF DEBTORS.

The debt collection industry has grown into "a $13 billion dollar industry. Around 35 percent of adults, or 77 million of the 220 million Americans with credit files, show debts in collections." CFPB 2015 Annual Report, *supra*, at 7. Not surprisingly,

"debt collectors generate most of their revenue from collections of medical debt, student loans, and financial services obligations such as credit cards, auto loans, and mortgages." *Id.*

The sheer amount of consumer debt in collection makes it one of the most important consumer protection concerns in the nation:

> Whether or not consumers owe and are liable for the debts collectors are attempting to recover, unlawful collection practices can cause significant reputational damage, invade personal privacy, [ ] inflict emotional distress[,] interfere[] with a consumer's employment relationships [and] impair the consumer's ability to repay debts.

Defining Larger Participants of the Consumer Debt Collection Market, 77 Fed. Reg. 65775-01, 65777 (Oct. 31, 2012) (to be codified at 12 C.F.R. pt. 1090). Indeed, "[i]n 2014, the CFPB and the FTC provided almost $700 million in relief to consumers who were subject to illegal collections practices; the CFPB collected $13 million in fines, and took seven enforcement actions involving egregious debt collection violations; the FTC's enforcement actions resulted in 47 businesses and individuals being banned from the debt collection business." CFPB 2015 Annual Report, *supra*, at 3.

"Today's collection industry is markedly different from the industry contemplated by the

FDCPA 35 years ago." Consumer Fin. Prot. Bureau, Annual Report 2012: Fair Debt Collection Practices Act 4 (2012), http://1.usa.gov/1PWCGNh (explaining the industry has been revolutionized by automation, technological advances, and new key players, including attorneys). "But, even as the industry has changed, abuses remain an issue. The collection industry continues to be a top source of complaints." *Id.*; *see also* Fed. Trade Comm'n, The Structure and Practices of the Debt Buying Industry i (2013), http://1.usa.gov/1R7Ov0O (same).

Complaints to the CFPB about debt collection abuses outnumber complaints about any other industry, product or service. Consumers lodged approximately 88,300 such complaints in 2014. CFPB 2015 Annual Report, *supra* at 12-13. Of those complaints, 37 percent reported they did not owe the debt being collected because it: did not belong to them (64 percent); had been paid already (26 percent); resulted from identity theft (6 percent); or had been discharged in bankruptcy (4 percent). *Id.* at 13. An additional 5 percent of complaints reported that consumers were being pursued for greater amounts of debt than they owed. *Id.* at 15. Communication tactics were the source of 20 percent of the complaints. *Id.* at 14. In 12 percent of the complaints, consumers reported abusive debt collection tactics, including threats to arrest or jail consumers if they did not pay, seizure or attempts to seize property, and collection or attempts to collect exempt funds. *Id.* at 14-15.

Many older people are living in financially precarious situations: they have growing debt loads,

lagging income, and depleted assets in the aftermath of the economic recession. *See* Traub, *supra* at 3-4; *see also* Meta Brown, *The Graying of American Debt*, Fed. Res. Bank of N.Y. (Feb. 12, 2016), http://nyfed.org/1Qnxxz9 (showing that the debt of Americans age 50 to 80 increased 59% since 2013). Such consumers are particularly vulnerable to debt collection abuses. *See* Consumer Fin. Prot. Bureau, Office for Older Americans, A snapshot of debt collection complaints submitted by older consumers 5-6 (2014), http://1.usa.gov/1KQeWeW Fully one third of all complaints by people over age 62 relate to debt collection. *Id.* (reporting that "[b]etween July 10, 2013 and September 30, 2014, the CFPB handled approximately 25,800 complaints from older consumers [o]ver one-third of those complaints were about debt collection.").

Collecting consumer debts using practices prohibited by the FDCPA exacerbates the suffering of vulnerable consumers, causing serious distress and depriving many of necessities basic to human survival, such as food, shelter, and medical care.

A. Increasing complaints about abusive debt collection practices corresponds to mounting consumer debt loads.

Congress sought to protect consumers from debt collection abuses specifically because it recognized that debtors facing collection are rarely "deadbeats." As the FDCPA's legislative history reveals,

> [o]ne of the most frequent fallacies concerning debt collection legislation is the contention that the primary beneficiaries are "deadbeats." In fact, however, there is universal agreement among scholars, law enforcement officials, and even debt collectors that the number of persons who willfully refuse to pay just debts is minuscule the vast majority of consumers who obtain credit fully intend to repay their debts. When default occurs, it is nearly always due to an unforeseen event such as unemployment, overextension, serious illness, or marital difficulties or divorce.

S. Rep. No. 95-382, at 3. Such unforeseen events continue to be the primary precipitating cause of default. *See Older Adults and Debt: Trends, Trade-offs, and Tools to Help* 1, National Council on Aging (May 2015) [hereinafter National Council on Aging Report], http://bit.ly/1XJ6lfN (explaining "unexpected costs—an unforseen hosipitalization, a vehicle requiring repair, or even emergency veterinary care for a sick pet—can plunge seniors into unmanageable debt").

The steadily growing volume of complaints about debt collection abuses correspond to a period of steep expansion of credit followed by a sharp economic downturn. *See* CFPB 2015 Annual Report, *supra*, at 7-8. At the beginning of 1977—the year the FDCPA was enacted—consumers carried revolving debt worth approximately $32 billion. Bd. of Governors of the Fed. Res., *Consumer Credit*

Outstanding, http://1.usa.gov/1T2w8AP By 2015, revolving debt increased more than 29 times to $935 billion. Bd. of Governors of the Fed. Res., *Statistical Release: Consumer Credit* (Feb. 5, 2016), http://1.usa.gov/1XJ7rs1.

Student loan debt has also increased dramatically; "the volume of outstanding federal student loan debt has more than doubled, rising from $516 billion in 2007 to greater than $1.2 trillion in the third quarter of 2015, surpassing all other categories of consumer debt aside from mortgages." Consumer Fin. Prot. Bureau, Student Loan Servicing: Analysis of public input and recommendations for reform 8 (2015), http://1.usa.gov/1TDQa4a (reporting "[m]ore than 41 million Americans collectively owe more than $1.2 trillion in student loan debt"). The CFPB estimates that "a quarter of student loan borrowers are, collectively. either delinquent or in default on more than $175 billion in student debt." *Id.* at 9. That subset is comprised primarily of "borrowers who attend proprietary schools and borrowers who do not successfully complete a program of study." *Id.* at 9-10.

Not only do more Americans carry more debt than ever before, but more people have debt that is unaffordable (i.e., the minimum payments consume more than 40 percent of their income). Craig Copeland, *Debt of the Elderly and Near Elderly, 1992–2013*, Employee Benefit Research Institute Notes, Vol. 36, No. 1, 10 (Jan. 2015), http://bit.ly/1QYh1SG (explaining that "a traditional threshold measure of debt-load trouble" is debt

payments that consume 40 percent of one's income). The increasing consumer debt load is especially acute for older age groups: the proportion of near-elderly (age 55-64) and elderly families (age 65 and over) with unaffordable debt loads increased from 5.8 percent in 1992 to 9.2 percent in 2013. *Id.* at 7

Debt load has increased, in part, because income is not keeping pace with rising costs, forcing people to borrow simply to pay for necessities such as shelter, food, and medical expenses.[2] *Id. See also*

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[2] Abusive credit origination and billing practices also contributed significantly to the increased debt load carried by older people. *See* Donna S. Harkness, *When Over-The-Limit is Over The Top: Addressing The Adverse Impact of Unconscionable Consumer-Credit Practices on the Elderly*, 16 Elder L.J. 1, 9-11 (2008). Many consumers were lured into opening accounts that unbeknownst to them charged high interest, fees, and penalties even if they were making minimum required payments. *See* U.S. Gov't Accountability Office, GAO-06-929, Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers 16 (2006). http://1.usa.gov/1RjoYnT. Despite paying their minimum balances every month and not making additional purchases, the balances on many credit card accounts increased substantially over time. The products were designed to generate revenue from penalty fees and consumer default and rather than repayment. *See* Examining The Billing, Marketing, And Disclosure Practices Of The Credit Card Industry And Their Impact On Consumers, Before the S. Comm. on Banking, Housing & Urban Affairs, 110th Cong. 3 (Jan. 25, 2007) (statement of Prof. Elizabeth Warren) (testifying that such credit and billing practices meant that "[a] debtor could pay nearly 100 percent of what she owed every year for the rest of her life, and thanks to the traps built in to her credit card, she would keep paying until she died—and still not pay off her card."). Congress passed the Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. 111-24, Title

Ke Bin Wu, *Sources of Income for Older Americans, 2012* AARP Pub. Pol'y Inst. 1 (Dec. 2013) (reporting "[i]n 2012, people aged 65 and older had an average (mean) income of $31,742, but half (median) had income less than $19,604."). Reduced availability of pensions as an employment benefit, low interest rates that depress investment growth, and waning employment prospects with longer periods of unemployment also make older people more economically insecure. McGhee, *supra* at 5. Moreover, "the value of savings-based sources of income has steadily declined, making Social Security the linchpin of the majority of seniors' livelihoods." *Id.* at 5.

With reduced income and fewer retirement assets at their disposal, older people have "become more vulnerable to the financial stresses of aging. Events like job loss and retirement, illness, death of a spouse, even repairs to aging homes and cars can force seniors to borrow—using credit cards, payday loans, home loans—if they have little savings to rely upon." *Id.* Over one-third of indebted older people have had to rely on credit cards to "pay for basic living expenses such as rent or mortgage payments, groceries, utilities, or insurance because they did not have enough money in their checking or savings accounts." *See* Traub, *supra* at 6.

I, § 108, 123 Stat. 1743 (May 22, 2009) (15 U.S.C. § 1602) [hereinafter CARD Act] to eliminate the worst of such practices. The CARD Act is credited with helping consumers avoid $6 billion in hidden and unfair fees and charges following the first year in which it was implemented. Consumer Fin. Prot. Bureau, CARD Act Report 21-22 (Oct. 1, 2013), http://1.usa.gov/1Q6Rg2t.

B. The bulk of debt in collection is related to unavoidable and unaffordable health care, which can compromise a debtor's ability to pay debt that otherwise would be manageable.

Health related events may result in unavoidable and unaffordable medical bills. "Medical bills account for the majority of debts that are referred to third-party collection agents." *Medical Debt Among People with Health Insurance*, The Henry J. Kaiser Family Foundation Report 14 (Jan. 2014) [hereinafter Kaiser Report], http://bit.ly/24mBUk9. People living in households with high medical debt may "deplete[ ] retirement or college savings, [lose their] homes to foreclosure, [do] without basics such as home heat. [incur] damage to their credit rating permanently reduce[ ] their standard of living [and] experience[ ] barriers to care." *Id.* at 4. Many people with unaffordable medical debt are forced into bankruptcy. *Id.*[3]

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[3] Health concerns triggered the majority of bankruptcies filed by older people (62.1 percent in 2007). David U. Himmelstein, et al., *Medical Bankruptcy in the United States*, 2007, 122 Am. J. Med., 741, 743 (2009), http://bit.ly/1OAQ59v. Bankruptcy filings among people 55 and older rose sharply between 1991 and 2007, with the greatest increases among those 75 and older (up 566.7 percent) and those ages 65 to 74 (a 177.8 percent increase). Deborah Thorne, Elizabeth Warren, & Teresa A. Sullivan, *Generation of Struggle* AARP Pub. Pol'y Inst. 1 (June 2008), http://bit.ly/1Uj0vlC.

The precarious financial condition of many older people, especially in the in the aftermath of the recession, is exacerbated by economic shock. As people age, it is not uncommon for them to incur substantial medical expenses from chronic or acute health conditions as they advance to older ages, corresponding with subsiding income as they begin to retire. "The economic and personal impact of medical debt can be devastating." Kaiser, *supra* at 4. "[M]edical debt [is one of] the most significant barrier[s] to the economic wellbeing of seniors." National Council on Aging Report, *supra*, at 1-2.

Even if people have health insurance, many do not have the income or assets necessary to cover unavoidable medical expenses for doctors, hospitals, prescriptions, co-payments, and more. Kaiser, *supra* at 3-4. Additionally, "[o]ften significant health events trigger[ ] loss of income, rendering unaffordable bills that might otherwise have been manageable." *Id.* "[A]bout one in five debtors (21%) indicated that they had lost at least two weeks' income because of a medical problem" of either a wage earner or spouse." Melissa B. Jacoby & Elizabeth Warren, *Beyond Hospital Misbehavior: An Alternative Account of Medical-Related Financial Distress*, 100 NW U. L. Rev. 535, 549 (2006). Such loss of income can "constitute[] a hard financial blow for families of modest means." *Id.* Unavoidable debt becomes even more unaffordable when consumers are forced to stop working permanently due to their own health or to care for a child, spouse, or parent. *Id.*

C. Economically insecure consumers may be plunged into a collection "nightmare" by unavoidable and unaffordable medical expenses and other financial shocks.

Deepening economic insecurity makes many unsophisticated, low-income, and older people particularly vulnerable to collection abuses that cause substantial distress and exacerbate already precarious personal and financial situations. *See* Jacoby, *supra* at 582 ("worrying about medical-related financial distress may exacerbate health problems"). People who already lack adequate financial means to afford the basic necessities of daily living typically do not have the resources to recover from an economic shock.[4] A chronic health condition or acute injury can result in unaffordable medical expenses and loss of household income that can cascade into a debt collection nightmare. Kaiser Report, *supra*, at 16-17 (outlining the emotional distress "nightmare" for people who find themselves in medical debt).

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[4] *See* Bd. of Governors of the Fed. Res. Sys., Report on the Economic Well-Being of U.S. Households in 2014 1 (May 2015), http://1.usa.gov/1oAZNne (finding "[a]lthough economic hardships are common, many individuals are ill-prepared for a financial disruption and would struggle to cover emergency expenses Forty-seven percent of respondents say they either could not cover an emergency expense costing $400, or would cover it by selling something or borrowing money. Thirty-one percent of respondents report going without some form of medical care in the 12 months before the survey because they could not afford it.").

A person with a serious medical condition can find it extremely difficult to cope with large volumes of confusing medical bills. The effect of an illness or medical event itself can compromise a debtors' ability pay their bills or manage their debts. *See id.* at 4. "Significant health events can also compromise a person's ability to manage the paperwork of medical bills[,]" which can be overwhelming due to sheer volume. *Id.* (finding most survey respondents emphasized "[t]hey had trouble tracking what had been paid, what was owed, and what had been transferred to collections" and that "confusing provider bills and insurance company statements [ ] lacked key information. Most didn't know where to seek help, and the burdens of illness made it harder to resolve problems on their own.").

Consumer debts may go into default due to economic pressures of unaffordable debt levels. Medical debt in particular may be sent to collection due to billing mistakes and insurance disputes that are difficult to resolve. Older people who have diminished capacity are particularly vulnerable to such situations and be unable to resolve them without assistance. *See* Naomi Karp & Ryan Wilson, *Protecting Older Investors: The Challenge of Diminished Capacity* 11, AARP Pub. Pol'y Inst. (Nov. 2011), http://bit.ly/1KQX0Re (describing financial decision making capacity as "one of the first abilities to decline as cognitive impairment encroaches, yet older people, [and] their families. are frequently unaware that these deficits are developing"). Similarly, older people who are socially isolated may be at greater risk of having debts in default. Bd. of Governors of the Fed. Res. Sys., Report on Economic

Well-Being of U.S. Households in 2014 17 (May 2015), http://1.usa.gov/1oAZNne (in survey measuring economic well-being, "27 percent of those experiencing hardships say they received financial assistance from friends or family in the past year, which illustrates the importance of social networks in weathering economic setbacks").

Few debtors facing collections are able to defend themselves effectively from abusive collection practices. They may also be unable to find or afford a lawyer to assist them. *See, e.g.*, Claudia Wilner, et al., *Debt Deception: How Debt Buyers Abuse The System To Prey On Lower-Income New Yorkers*, Neighborhood Econ. Dev. Advocacy Project 6 (2010), http://bit.ly/1Qqfo3T.

D. Debt collectors cause severe distress by intentionally targeting unsophisticated debtors and older people and using abusive debt collection practices in order to exploit their vulnerabilities.

Collection attempts, especially abusive ones, may confuse or threaten vulnerable debtors. In this case, for example, the Sixth Circuit recognized that a letter printed on attorney general letterhead is imbued with abusive and coercive power, finding that "[u]se of the letterhead is intended to induce a higher rate of repayment by intimating that the State of Ohio is in fact sending the letter, which may lead the naïve consumer to prioritize this debt above all others for no good reason." *Gillie v. Law Office of Eric A. Jones, LLC*, 785 F.3d at 1108. Further, the

court found, "[t]here is no compelling reason for special counsel to use the OAG letterhead, other than to misrepresent their authority and place pressure on those individuals receiving the letters." *Id.* at 1105.

Unscrupulous debt collectors intentionally target and abuse unsophisticated and older people in the collection process "based on assumptions that these debtors are easily confused about whether the debt existed, that they fear a collector garnishing their [S]ocial [S]ecurity income, and that they are hesitant to engage in legal skirmishes." Matthew W Ludwig, *Abuse, Harassment, and Deception: How the FDCPA is Failing America's Elderly Debtors*, 1 Elder L.J. 135, 152, 156 (2008) (citing Senate hearings on the FDCPA and quoting testimony regarding egregious abuses, including the story of an elderly woman who was told that if she did not pay the funeral expenses for her husband, the collector would get a court order to dig up her husband's body and repossess the casket).

Many older people are vulnerable to debt collection abuses because they misunderstand or fear encounters with the legal system. *Id.* at 152. Some may believe, for example, that they will go to jail if they do not pay a debt being pursued by a collector. Consumers' fears of going to court or being arrested for not paying a debt—rational or not—are constantly reinforced by debt collectors threats.[5]

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[5] *See* CFPB 2015 Annual Report at 14-15 (reporting that 12 percent of complaints about debt collection in 2014 involved the company taking or threatening to take an illegal action. "Most

Such fears are further supported by widespread and increasing media reports describing debtor's prisons and debtors spending days in jail after being arrested on bench warrants or writs of body attachment that debt collectors pursue frequently.[6]

In light of such fears, and as recognized by Congress when it enacted the FDCPA, a letter from an attorney or a court may cause considerable

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of these complaints are about threats to arrest or jail consumers if they do not pay (56%). Other complaints relate to lawsuits including threats to sue on a debt that is too old (23%), being sued without proper notification of the lawsuit (7%), seizures or attempts to seize property (6%), collection or attempts to collect exempt funds such as child support or unemployment benefits (5%), or being sued in a place that is different from where the consumer lives or where the consumer signed the contract (2%)").

[6] *See*, e.g., Brad Reid, *May You Be Imprisoned For Failing to Pay a Debt?*, Huffington Post Blog (Sept. 16, 2015 12:15 PM), http://huff.to/1TxGHdz (outlining an "incomplete list" of circumstances where someone might be imprisoned for financial debt); Joseph Shapiro, *Lawsuits Target 'Debtors' Prisons' Across the Country*, NPR Special Series (Oct. 26, 2015 2:49 PM), http://n.pr/1KIhqMm (outlining six lawsuits filed against cities, police, and courts for their "debtors' prisons."); *cf.* Rebecca Thiess & Ellen Taverna, *Cleaning Up Debt Collection: New rules are necessary to end abusive debt collection practices*, U.S. News (Mar. 24, 2014, 10:45 a.m. EDT), http://bit.ly/1QydhwP (relaying examples of collection abuses that fuel fear of courts, including, "an employed woman who had simply forgotten about a $425 loan was arrested and spent three nights in jail, until her mother finally borrowed $1,250 to pay her bond").

distress.[7] Such debtors may pay a debt—even if they believe they do not owe it, simply to alleviate the stress of the collection attempt, fear of being arrested and sent to jail, or to stop high volumes of harassing and threatening phone calls. *See* Ludwig, *supra* at 154 (describing story of an attorney acting on behalf of a debt collector who threatened he would cause a 68 year old woman to lose her home if she did not pay her debt within a week. She was so distraught that she quit her job so she could draw down her small retirement account to repay the alleged debt.).

Similarly, older people are highly susceptible to threats that they may lose their home or Social Security seized by a collector. *See* Ludwig, *supra* at 138 (discussing the vulnerability of older people to such threats because "'they typically have a great deal of equity in homes that they have owned for many years and because they likely operate on fixed incomes'") (citations omitted). For example, one collector recounted that he targets older people for debt collection because

> [t]hey hear someone saying their social security benefits are being looked into,

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[7] The FDCPA prohibits "[t]he use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval" and "[t]he use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization." 15 U.S.C. §§ 1692e (9), (14).

> their home is being looked into [and] when you've got all this thrown at you and there's someone talking sly on the phone, you're forced to pay

Id. at 156 (citations omitted).

The primary and often only source of income for most older people is Social Security. *See* Wu, *supra*, at 1. Federal law exempts Social Security from attachment because it is designed to provide sufficient income to lift older people out of poverty.[8] *See* Wu, *supra* at 1. Collectors nevertheless threaten to seize it, which will leave the debtor without any income to pay rent, buy food, or obtain health care. If debt collection threats force or mislead them into paying debts using exempt income—particularly debts they do not actually owe—it may leave them with inadequate financial resources to meet their basic needs.

Older consumers living alone are often targets of abusive debt collection tactics. Being socially isolated makes them particularly vulnerable, because they may not have access to friends and family who can help them financially, assist them

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[8] Social Security may not be garnished or attached, except in very specific circumstances, including collection of state taxes, child support, or alimony. 42 U.S.C. § 407 ("The right of any person to any future payment under this title. shall not be transferable or assignable and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.").

with negotiating an affordable payment plan, or take action to defend against the collection of an invalid or overstated debt. *See* Ludwig, *supra* at 155 (describing an eighty-nine year old who was being "hounded for six months by a debt collector" for a debt he did not owe, and it was not until his caretaker and sons got involved that they were "able to sort out the mistake after a number of letters and angry telephone conversations.").

People with unaffordable debt may be able to discharge it in bankruptcy, although that is a result that Congress hoped to discourage by enacting the FDCPA.[9] 15 U.S.C. § 1692(a) ("There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy"). But many people do not or cannot file for bankruptcy. Debtors who are broke but not bankrupt may continue to suffer severe deprivation. Their experiences provide a window into the injury caused by abusive debt collection methods targeted at older, unsophisticated, or low-income consumers. For example, "9.7% report having gone without food while struggling before bankruptcy, 31.2% report being late on rent or mortgage, 31.2% report going without required medication, and 21.2% report skipping doctors' appointments." John A. E. Pottow, *The Rise In Elder Bankruptcy Filings And The Failure Of U.S. Bankruptcy Law*, Law &

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[9] Student loan debt often is not dischargeable in bankruptcy, however.

Economics Working Papers, Paper 17, 246 (2012), http://bit.ly/24pjak2 (even greater percentages of people who filed for bankruptcy suffered similarly; 47.1 percent reported going without required medication and 30.6 percent reported skipping doctors' appointments).

II. THE FDCPA ESTABLISHED A MINIMUM NATIONAL STANDARD OF CONDUCT THAT PROTECTS DEBTORS AND DOES NOT UNDULY LIMIT STATES FROM COLLECTING CONSUMER DEBT USING THIRD-PARTY DEBT COLLECTORS.

A. The FDCPA established a minimum national standard of conduct to protect vulnerable consumers from the abusive practices of third-party debt collectors.

Acknowledging that it is important for consumers to pay their debts, Congress nevertheless disapproved of collectors exploiting the financial, educational, and circumstantial vulnerabilities of debtors. Congressman Frank Annunizzo explained that "[w]hile unscrupulous debt collectors comprise only a small segment of the industry, the suffering and anguish which they regularly inflict is substantial." S. Rep. No. 95-382, at 2.

Congress enacted the FDCPA specifically to protect debtors from an industry that it viewed as having little or no market incentive to treat them properly. Congress noted that "[u]nlike creditors, who generally are restrained by the desire to protect their good will," third-party debt collectors "are

likely to have no future contact with the consumer and are often unconcerned with the consumer's opinion of them." *Id.* Congress knew that collectors, who have a strong "incentive to collect by any means" could exploit the financial, educational, and circumstantial vulnerabilities of debtors. *Id.*

B. The practices prohibited by the FDCPA should not be allowed by any collector.

The Sixth Circuit narrowly interpreted the FDCPA's "state officer" exclusion from the definition of "debt collector." *Gillie v. Law Office of Eric A. Jones, LLC*, 785 F.3d 1091, 1101-1102 (6th Cir. 2015), *cert. granted sub nom Sheriff v. Gillie*, 193 L. Ed. 495 (U.S. Dec. 12, 2015) (No. 15-338). It held that third-party debt collectors serving as independent contractors for the state to collect consumer debts are not excluded from the FDCPA's prohibitions. *Id.* The holding correctly recognized that the exception is narrow and not available to immunize independent contractors like the Petitioners from liability.

Consumers need protection from abusive debt collection practices of third-party debt collectors hired by state governments. Regardless of who hires them, third-party debt collectors of consumer debt have the same inherent financial incentives to collect by any means that Congress sought to counteract by enacting the FDCPA.[10]

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[10] Abuses also result from errors that outsourcing of collections to third-party debt collectors introduces, such as

Moreover, the FDCPA's prohibitions will not interfere unduly with a state's ability to collect consumer debt. It merely requires third-party debt collectors to use any of the wide variety of legal means available to them to collect covered debts.[11]

The FDCPA's explicit language and legislative history clearly reflects "the view that 'certain things ought not to happen, period.'" *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 596 n.14 (2010) (quoting Senate Comm. on Banking, Housing and Urban Aff., Markup Session: S. 1130—Debt Collection Legislation 60 (July 26, 1977) (statement of primary sponsor Senator Riegle)). But

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collecting from the wrong person or in the wrong amount. *See* CFPB 2015 Annual Report, *supra*, at 13 (showing 37% of the complaints received by the CFPB are regarding continued attempts to collect debt not owed); *id.* at 20 (discussing "[f]aulty training materials causing prohibited disclosures to third parties"). Automation of the collections process also introduces errors that result in abuses. *See, e.g.*, Darren Waggoner, *Hospital Computer Glitch Wrongly Sends Accounts to Collections*, Collections&CreditRisk (Feb. 22, 2016), http://bit.ly/1TwPtbD (reporting an estimated 6,200 hospital accounts were inadvertently sent to a collection agency before being submitted to insurance "because of a glitch in changing to a new computer system").

[11] The FDPCA defines "debts" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment." 15 U.S.C. § 1692a(5). Thus, contrary to the assertions of the Petitioners' amici, this case does not implicate the state's collection of non-consumer debts such as taxes, fines, or fees. *See Staub v. Harris*, 626 F.2d 275, 278 (3d Cir. 1980).

exempting third party debt collectors from the reach of the FDCPA opens vulnerable consumers to the suffering and anguish that Congress sought to protect them against.

Petitioners may argue that the facts of this case do not demonstrate a deceptive or misleading practice. But exempting third-party debt collectors hired by a state to collect a consumer debt will clearly open consumer debtors to the possibility of such abuses, and will prevent consumers from challenging conduct that the FDCPA declared should be prohibited.

Petitioners' amici may assert that such abuses are not an issue when a third-party collector is collecting on debts owed to the states. There is ample evidence to the contrary, however. Third-party collectors engaged to collect taxes, parking tickets, fines, and court fees have engaged in widespread shocking and reprehensible behavior toward state residents. *See, e.g.*, Blake Ellis & Melanie Hicken, *The secret world of government debt collection: A CNNMoney Investigation*, CNN Money (Feb. 17, 2015), http://cnnmon.ie/1Ti02kA (exposé of outrageous state government debt collection abuses that clearly would violate the FDCPA if they were covered debts).

The Petitioners' position requires this Court to interpret the FDCPA in a manner that is directly contrary to the broad remedial purposes for which Congress enacted it. It should be rejected. *See Maracich v. Spears*, 133 S. Ct. 2191, 2200 (2013) ("An exception to a "general statement of policy" is

"usually read narrowly in order to preserve the primary operation of the provision") (quoting *Commissioner v. Clark*, 489 U. S. 726, 739 (1989)).

CONCLUSION

For the foregoing reasons, the Sixth Circuit's interpretation of the FDCPA should be affirmed. A third-party debt collector hired on a contingency fee basis to collect debt owed to a state is not included within the FDCPA's narrow exception for state officers.

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